IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/08/2002

Coram

The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice D. MURUGESAN

W.A. No.482 of 2002 and W.A. No. 484 of 2002
and
W.A.M.P. Nos.968, 971, 2212, 2213, 2409 and 2410 of 2002.

1. The State Govt. of Tamil Nadu,
rep. by its Secretary,
Health and Family Welfare Department,
Fort. St. George,
CHENNAI - 600 009.

2. The Director of Medical Education, ... Appellants in
Chennai - 10. both appeals

-Vs-

Meenakshi Ammal Trust,
Rep. by its Managing Trustee ... Respondent in
A.N. Radhakrishnan both appeals

For Appellants : Mr. R. Muthukumaraswamy,
Addl. Solicitor General,
assisted by
Mr. V.R. Rajasekaran,
Spl. Govt. Pleader

For Respondent : Mr. G. Masilamani,
Sr. Counsel for
M/s. B. Saraswathi
:J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

The respondent is an educational trust and is already running Meenakshi Ammal Dental College, Meenakshi College of Nursing, Meenakshi College of Physiotheraphy, Meenakshi College of Occupational Therapy, Arulmigu Meenakshi Amman College of Engineering, Vadamavandal, Meenakshi College of Engineering, Uthiramerur, Meenakshi Arts and Science College for Women, Uthiramerur, Meenakshi Ammal Polytechnic, Meenakshi Ammal Industrial Training Institute and Meenakshi Ammal Matriculation School.

2. Intending to establish a medical college under the name and style of, 'Meenakshi Medical College and Research Institute', the respondent applied on 23.10.1997 to the appellants for the grant of Essentiality Certificate at Enathur near Kancheepuram, Tamil Nadu. There was a long delay in processing the application and to expedite the same, the respondent filed W.P. No.6755 of 1998 and by order dated 19.5.199 8, a learned single Judge of this Court directed the appellants to inspect and pass orders stipulating a time of one month. The inspection report was submitted on 31.12.1998 to the appellants but no action was taken pursuant thereto by the appellants, which necessitated the respondent to file W.P. No.18739 of 1999. While the writ petition was pending, the appellants passed order dated 1.2.2000 refusing to issue the Essentiality Certificate which resulted in the respondent filing W.P. No.4302 of 2000.

3. The appellants contested the writ petitions on the ground that the norms set for issuance of Essentiality Certificate were not met by the respondent and as such, there is no cause for the latter to complain. Disagreeing with the stand of the appellants, a learned single Judge by judgment dated 29.8.2001, had issued directions to the appellants to issue the Essentiality Certificate to the respondent enabling the latter to proceed further to obtain the necessary permission from other authorities and particularly Medical Council of India. A time of 60 days from the date of the receipt of the order was set but the same has not been complied with by the appellants. But the latter, instead, filed the instant writ appeals.

4. The matter is governed by the Medical Council Act, 1956, which is hereinafter referred to as the Act. In exercise of the power conferred under Section 10-A read with Section 33 of the Act, Regulations have been framed titled, 'Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993'. The same was superseded by the subsequent Regulation viz., 'Establishment of Medical Colleges Regulations, 1999'. Under Regulation 2 (3) thereof, obtaining Essentiality Certificate from the State Government is a requirement in order to apply for permission to establish a Medical College.

5. In the matter relating to the grant of permission to set up new medical colleges, the role of the State Government vis-à-vis that of the Central Government and the Medical Council of India was the subject matter of adjudication in THIRUMURUGA KIRUPANANDA VARIYAR THAVA THIRU SUNDARA SWAMIGAL MEDICAL EDUCATION AND CHARITABLE TRUST v. THE STATE OF TAMIL AND OTHERS (1996) 3 S.C.C. 15). In the said case, the State Government took a stand that in view of the proviso to subSection (5) of Section 5 of the Medical Universities Act, inserted by the State Act, no college can be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, for such permission have been complied with. This claim was tested on the touchstone of Section 10-A, which has been incorporated in the Indian Medical Council Act, 1956, by a later amendment. Interpreting the provisions relevant on the subject in the context of the legislativ e power conferred by Entry 25 of List III of Schedule VII of the Constitution, it was held by the Supreme Court that

the State Government have got no say in the matter of establishing a new medical college excepting verifying the qualifying criteria for issuance of Essentiality Certificate regarding desirability and feasibility of having the proposed college at the proposed location. It is emphatically held by the Supreme Court that such requirement of obtaining an Essentiality Certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location, cannot be equated with obtaining prior permission of the State Government for establishing a new Medical College as required under proviso to Section 5 (5) of the Medical Universities Act. It was also held in no uncertain terms that the Essentiality Certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone. But that is not the only judgment on the point. In STATE OF MAHARASHTRA v. INDIAN MEDICAL ASSOCIATION AND OTHERS (2002) 1 S. C.C. 589), which is a latest adjudication on the point, the Supreme Court held that the criteria for issuance of the Essentiality Certificate by the State is the desirability of location of the proposed Medical College as also the provision for adequate clinical materials as per the guidelines prescribed by the Medical Council of India, at the proposed Medical College. That is the law of the land in operation.

6. In so far as the feasibility and desirability of the place is concerned, the State has got no objection. Objection is raised only with regard to the compliance in providing clinical materials. We do not feel it necessary to enumerate the said requirements in detail, as there had been five inspections, four during the pendency of the writ petition and one after the writ appeals have been filed. The First Inspection Report is dated 31.12.1998. The team comprised of Dr. T. Munusamy, Dean, Government Stanely Medical College and Hospital, Chennai, Dr. B. Premkumar, Dean, Chennai Medical College and Dr.A. Karuppanna Pillai, Dean, Coimbatore Medical College. Inspection was made on 30.12.1998 and the report was sent to the second appellant on 31.12.1998. It is apt to extract the said report, "INSPECTION REPORT.

MEENAKSHI AMMAL TRUST MEDICAL COLLEGE
"As per the instructions of the Director of Medical Education, the inspection team consisting of Dr. T. Muniswamy, Dean, Stanely Medical College, Dr. B. Premkumar, Dean, Chennai Medical College and Dr.A. Karuppanna Pillai, Dean, Coimbatore Medical College inspected the Meenakshi Ammal Trust Medical College to be established on 30.12.1998.

The Medical College with proposed 100 students intake per year, is to be started temporarily at Maduravoyal, Alapakkam, Chennai. This trust is conducting a Dental College at the above site for the past seven years. The facilities already existing for the Dental College in basic sciences like Anatomy, Physiology, Biochemistry are to be expanded and utilised for the proposed medical college. The new buildings are under construction and there made a provision of 13,000 sq.feet for the department of Anatomy, Dissection hall histology laboratory. A provision of 10,000 sq.feet has been made for the department of Physiology. Another 10,000 sq.feet is provided for the Biochemistry department and another 3,000 sq.feet for the Social and

Preventive Medicine department. The building work is going on, will be ready for occupation in another two to 3 months.

All the teaching staff for the department of Anatomy, Physiology, Biochemistry and Social and Preventive Medicine has been appointed and were present at the time of inspection, there list is enclosed in the appended volume. for the Biochemistry department and another 3,000 sq.feet for the Social and Preventive Medicine department. The building work is going on, will be ready for occupation in another two to 3 months.

All the teaching staff for the department of Anatomy, Physiology, Biochemistry and Social and Preventive Medicine has been appointed and were present at the time of inspection, there list is enclosed in the appended volume.

Buildings are ready for occupation of 300 bedded hospital and additional buildings are under construction for providing another 300 beds, operation theatre, casualty etc. The teaching staff for Medicine, Surgery and Obstetrics and Gynaecology departments have been appointed and were present at the time of inspection.

It is proposed that the permanent buildings for the college and hospital and Hostels will be located at a 50 acre campus at Enathur village on the Madras Bangalore highway near Kancheepuram. This place is about 65 kilometers from Madras city. The land is under process of acquisition.

At present, the students will be provided hostel facilities with separate Mens Hostel and Ladies hostel in which the B.D.S. students are also staying.

In the light of the above findings, the Government is recommended to issue of essentiality certificate to the Meenakshi Ammal Trust for establishing a Medical College with annual intake of 100 students.

Sd/-
DR.A. KARUPPANNA PILLAI
MEMBER

Sd/-
DR. B. PREMKUMAR
MEMBER

Sd/-
DR. T. MUNISWAMY
CHAIRMAN"

But the second appellant did not recommend for the issuance of the Essentiality Certificate and again directed Dr. V. Anil Kumar, Deputy Director of Medical Education, to inspect the college again. The said officer inspected the respondent institution on 24.11.2001 and filed his report favouring the issuance of the Essentiality Certificate on the ground that the

respondent has complied with all the norms set by the Medical Council of India for establishing the Medical College. Yet there was a third inspection on 12.1.2002 and this time, it was Dr. P. Raja Sambandham, who was then holding the post of the Director of Medical Education. Though all the details were noted, no inspection report has been filed but the above Director, accompanied by Dr. A.D. Nageswari, Deputy Director of Medical Education, has again inspected the institution on 16.4.2002 and filed his inspection report before the Government, which reads,

"INSPECTION REPORT

As per instruction of Secretary to Government, Health & Family Welfare Department, I Dr. P. Raja Sambandam, Director of Medical Education, accompanied with Dr. A.D. Nageswari, Deputy Director of Medical Education (Planning & Development) inspected Meenakshi Ammal Medical College and Research Institution on 16.4.2002 to verify the infrastructure facilities available at the Hospital and College as per MCI norms.

Herewith I have enclosed the format which contains the MCI requisites and the available facility:

ANNEXURE I

MEDICAL COLLEGE
MCI Norms

1. Land 25 Acres Available

2. Hospital 300 beds with necessary Details furnished infrastucture facility below

3. Bank Guarantee 150 Lakhs Available
100 Admission

ANNEXURE - II

4. Infrastructure Manpower Availability list as per Facilities (Checked by MCI norms is enclosed Dr.A.D.Nageswari)

Equipments Deficiency Report is
(Random check enclosed
carried out by
Dr.(Prof.)P. Raja
Sambandam)

Buildings Deficiency Report is
(Random check enclosed
carried out by
(Dr.(Prof.) P. Raja
Sambandam)"

The final remark of the Officer was to the following effect:

" As per G.O. No.Ms.211 H & FW Department, dated 13.8.2002, the Meenakshi Ammal Medical College and Research Institution was inspected taking into consideration of the Medical Council of India Norms for issuing essentiality certificate (refer to Para No.III of G.O. Ms.No.211). However, the Government may decide about issuance of essentiality certificate after perusing the Inspection Report.

Sd/-
(Dr.(Prof.) P. Raja Sambandam
Director of Medical Education"

It is pertinent to mention that the above inspection was a random check and in fact, it is very clearly mentioned in the said report, which reads, 'All the equipments were not kept for display. Hence only random check was carried out'.

7. As such, we were of the considered view, in view of the conflicting versions of Dr. P. Raja Sambandham, the then Director of Medical Education, as compared to the earlier reports dated 31.12.1998 and 24.11.2001, to appoint another Committee. A Committee comprising of Dr. C. Ravindranath, the present Director of Medical Education, and Dr. Chandraskara Shetty, former Vice Chancellor of Rajiv Gandhi University of Health Sciences, Karnataka and M/s. R.P. Kabilan and Vijayakumari Natarajan, Advocates, High Court, Madras, has been appointed to inspect the institution on 27.7.2002 and to file a report before the Court on 30.7.2002.

8. The said Committee filed a Report dated 28.07.2002, from which, it is obvious that the respondent had complied with the requirements set by the Medical Council of India. The second appellant, who was a Member of the Committee, has filed a separate Report and also filed an affidavit supporting the said Report. There is nothing incriminating in the Report filed by the second appellant, which is in the nature of objections, and after reading his affidavit and the Report, what is culled out is that even though the clinical materials are made available by the respondent, the said word 'Clinical Material' cannot be interpreted in a narrow manner, and it means and includes the availability of the number of patients matching the percentage of occupancy rate prescribed by the Medical Council of India, the investigations done to the patients (Laboratory investigations like Bio-Chemical, Microbiology and Clinical Pathology), X-Rays taken, the number of surgeries done in various specialities and the number of cases seen in the Out Patient Department and In Patient Department. Ultimately, the objection raised by the second appellant for the issuance of Essentiality Certificate is non-availability of required number of patients on the premise that mere provisions of instruments, materials like machineries and buildings does not mean that the respondent has fulfilled the need of the clinical material to impart medical education.

9. Now, the point has boiled down to a narrow compass as to whether there

should be actual patients of the number required at the time of inspection or around the said period. This depends upon the proper construction of clause (5) of the Guidelines issued by the Medical Council of India, which reads, "Regulation-2: QUALIFYING CRIETERIA - The eligible persons shall qualify to apply for permission to establish a medical college if the following conditions are fulfilled:-

(1) to (4) ……..
(5) that the person owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into a teaching institution in the campus of the proposed medical college.

(6) to (8) ….. "

The said provision cannot be construed as requiring actual number of patients at the time of either inspection by the Authority or issuing Essentiality Certificate. What is required is construction of a hospital making provision for not less than 300 beds with the necessary infrastructure facilities and not the presence of the actual number of patients at the time of inspection. The number may vary according to circumstances. Some times, it may be less and some times it may be more. There may be occasions where the beds are empty and there may be some other occasions where even 300 beds are not sufficient because of exigencies. The object and intendment of satisfying the requirements is to see that there is a hospital readily-built with all infrastructural facilities capable of receiving and treating patients, both out-patients and in-patients, and should there be a necessity of patients to be admitted, then there should be accommodation for 300 beds. Once this condition is satisfied and which in fact is satisfied by the respondent, even according to the latest report of the second appellant, the objection raised by the second appellant that actual number of patients were not there at that time, even assuming to be correct, is not at all germane for consideration as to issuance of the Essentiality Certificate. Further, it is not demonstrated as to how and why the successive reports, which are affirmative for the issuance of Essentiality Certificate, should be ignored.

10. In view of what is stated above, we dismiss the Writ Appeals. However, time for compliance of the order of the learned single Judge is granted by one week from today. Consequently, W.A.M.P. Nos.968, 9 71, 2212, 2213, 2409 and 2410 of 2002 are closed.

(B.S.R., CJ) (D.M., J)
bh/sm 22.08.2002

Internet : Yes
LR Copies : Yes